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UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

NATIONAL URBAN LEAGUE, et al.,

Plaintiffs,

v.

WILBUR L. ROSS, JR., et al.,

Defendants.

CASE NO. 5:20-cv-05799-LHK

**PLAINTIFFS' RESPONSE TO ORDER
 FOR RESPONSE TO EMAILS (DKTS.
 258, 263, 269)**

Date: TBD
 Time: TBD
 Place: Courtroom 8
 Judge: Hon. Lucy H. Koh

1 Plaintiffs submit this Response to the Court’s Orders for Response to Email (Dkts. 258,
2 263, 268). For the reasons set forth below, Plaintiffs believe that the emails and evidence the
3 Court has received continue to show that Defendants are circumventing the Court’s PI Order.

4 **A. Mr. Harkins (Dkt. 262)**

5 Mr. Harkins, an enumerator in the Santa Rosa ACO—an area that has been hit by fires with
6 numerous households subject to evacuation orders—identifies “17000 homes remaining in the
7 region to be counted,” yet his office plans “to wrap things up by Sep. 30th, not Oct. 5th.”
8 According to the Bureau’s website as of today, the Santa Rosa ACO is at 94.7% NRFU
9 completion, while California is at 99.4%. Like others, Mr. Harkins’ account demonstrates that
10 Defendants’ will point to 99% completion at the state level, without providing any explanation as
11 to the decreased accuracy of the count at the local level.

12 As Mr. Christy notes, the Bureau is hampered by the fires in that region and are
13 “follow[ing] the guidance of local officials.” Dkt. 266-1 ¶ 17. Because of the imminent October 5
14 deadline, it is almost certain that non-direct enumeration will occur, such as telephone calls,
15 proxies, or administrative records. *See id.* But with so many displaced, the Bureau may have to
16 “rely on imputation.” *Id.* Indeed, according to Mr. Christy, this will happen nationwide, and not
17 just where there are natural disasters. *See* Dkt. 260-1 ¶ 13. Mr. Christy is confirming what
18 Plaintiffs’ experts said would happen when Plaintiffs filed their preliminary injunction motion.

19 As the Court is aware from these detailed expert declarations, these second-best methods
20 have a profound effect on immigrants and minorities—the hard to count populations. *See, e.g.,*
21 Dkt. 36-2, Thompson Decl. ¶ 22 (“As I noted above, it is very likely that the Census Bureau will
22 have to rely more on proxy enumeration and whole person imputation tha[n] in previous censuses.
23 While this will be a particular problem for the hard-to-count areas, these less accurate enumeration
24 methods will also most likely be used more across the board in the 2020 Census relative to
25 previous censuses. In addition to the increased use of proxy enumeration, as I discussed above,
26 employing a higher level of administrative records and whole person imputation will result in
27 lower quality than would have been achieved through direct in-person contact.”); Dkt. 36-3,
28 Hillygus Decl. ¶ 23 (describing that “use of administrative records can worsen the differential

undercount”), ¶ 38 (describing “lower quality thresholds” and “household size being underestimated by a proxy respondent or imputation procedure”). Moreover, in areas of natural disaster, there will be “less data the Bureau has about housing units in a given geography,” making it “more difficult . . . for the Bureau to correctly impute households.” Dkt. 36-4, Louis Decl. ¶ 22.

Defendants addressed none of this in their efforts to rush to finish counting so that apportionment numbers can be delivered by the Court’s enjoined deadline of December 31, 2020.

B. Anonymous (Dkt. 268)

The anonymous emailer provides an account of the Bureau’s failure to perform appropriate Group Quarters and Service Based Enumeration for those experiencing homelessness in the emailer’s area. While Plaintiffs are not sure, in what may have been a violation of the Court’s TRO, Anonymous states that timing for Service Based Enumeration was “cut short” as was “the time to canvass for areas where those experiencing homelessness may be temporarily living outdoors.” Anonymous appears to have compared the 2010 numbers to current numbers and sees that their “county alone had a decrease by close to 85% of locations.” “Due to the timeline being cut short and the directive not to canvass during enumeration night, it was not possible to obtain anything close to complete data.” Anonymous also recounts for the Court the importance of each little bit of counting to funding for various localities.

C. Anonymous (Dkt. 257)

Like a previous concerned Bureau employee (*see* Dkt. 238), this anonymous emailer explains the importance of Mobile Questionnaire Assistance (MQA) and the special skills that the people hired to perform MQA have. Mr. Christy has declared that shutting down MQA is phased with shutting down data collection activities. Dkt. 260-1 ¶ 7. There is no reason MQA should be terminated while self-response and NRFU field operations continue, as they should under the Court’s PI Order.

Dated: September 30, 2020

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11 **ATTESTATION**

12 I, Sadik Huseny, am the ECF user whose user ID and password authorized the filing of this
13 document. Under Civil L.R. 5-1(i)(3), I attest that all signatories to this document have concurred
14 in this filing.

15 Dated: September 30, 2020

LATHAM & WATKINS LLP

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